

REMARKS

Summary Of Office Action

Claims 1-49 are pending in the application.

The Examiner has determined that there are four patentably distinct inventions described in the application, and has required applicants to elect one invention for prosecution.

The inventions identified by the Examiner in the claims are:

Group I: Claims 1-12, 18-20 and 22-26;

Group II: Claims 13-17, 21 and 27-32;

Group III: Claims 33-37 and 40-47;

Group IV: Claims 38-39 and 48-49.

The Examiner also has determined that there are six patentably distinct species described in the application, and has required applicants to elect one species for prosecution.

The species identified by the Examiner in the drawings are:

Species 1 as shown in figures 1a-1c;

Species 2 as shown in figure 2;

Species 3 as shown in figure 3b;

Species 4 as shown in figure 3c;

Species 5 as shown in figure 5a;

Species 6 as shown in figures 5b and 5c.

Applicants' Reply

Applicants hereby elect, with traverse, for initial substantive examination in this application, the invention of Group I (Claims 1-12, 18-20 and 22-26). Applicants hereby respectfully reserve the right to pursue the inventions of the non-elected groups, as originally claimed, in one or more divisional applications.

The Examiner has taken the position that Groups I and III are patentably distinct inventions. Applicants respectfully disagree with the identification of the two above-mentioned groups as being patentably distinct. The Examiner has not stated any distinction between the apparatus claims of Group I and the apparatus claims of Group III. The Examiner has not gone beyond preamble-type distinctions. But the preambles of all of claims 1, 18, 22, 33, and 40 are

identical. Therefore, the Examiner has not stated any reason for separating some of these claims into Group I and others into Group III. Likewise, regarding the method claims identified by the Examiner in Groups II and IV, no distinction has been provided for separating those two groups. Rather, the Examiner has alleged only preamble-type distinctions, when in fact the preambles of all of claims 13, 21, 27, 38, and 48 are identical.

To the extent that the Examiner has identified Groups I and III as being patentably distinct, and Groups II and IV as being patentably distinct, the restriction of inventions is respectfully traversed.

Regarding the Examiner's restriction of species, applicants elect, without traverse, for initial substantive examination in this application, Species 1. The claims readable on Species 1 are all claims in Group 1 (i.e., claims 1-12, 18-20, 22-26). Claim 5 is included because applicants' specification states at page 16, lines 3-5 that "[i]n further embodiments of device 101, expanding inner structure 130 may be a self-expanding structure." (Emphases added.) Claim 18 is included because applicants' specification states at page 23, line 31 - page 25, line 6 that "FIG. 6 shows one configuration of filter element 600 in which the size

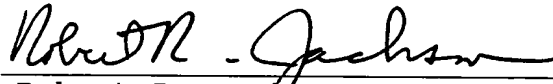
distribution of holes 610 does not change significantly during device deployment. . . . Filter element 600 and elastic membrane 620 may be incorporated in various types of implant device structures, for example, membrane tube 120 FIG. 1a When the device incorporating these two components is expanded, most of the concomitant stretching of the filter configuration due to the increase in device size is accommodated by the stretching of elastic membrane 620 leaving the size of filter element 600 substantially unchanged from its predetermined value." (Emphases added.) Claim 22 is included because applicants' specification states at page 17, lines 2-4 (in the discussion of figures 1a-c) that "[a] second type of the component structures or substructures may include anchoring elements, and, for example, serve to retain the deployed device in position."

Additionally, some or all of the claims from Group 1 may also be readable on other species.

Conclusion

Applicants have elected, with traverse, Group I (claims 1-12, 18-20 and 22-26) for examination. Applicants have also elected, without traverse, one species for examination as required by the Examiner. An early and favorable action is respectfully requested.

Respectfully submitted,



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